

Association for Local Telecommunications Services

March 10, 1999

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**FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY**

Magalie Roman Salas
Secretary
Federal Communications Commission
445 Twelfth Street, S.W.
Washington, D.C. 20554

EX PARTE OR LATE FILED

**Re: Notice of Ex Parte Presentation in CC
Docket 96-98, Implementation of the
Local Competition Provisions in the
Telecommunications Act of 1996**

Dear Secretary Salas,

Pursuant to Section 1.1206(b) of the Commission's Rules we are submitting two copies of an ex parte letter to Chairman Kennard for inclusion in the above-referenced proceeding. In addition could you please date-stamp the extra enclosed copy and return it to me in the self-addressed stamped envelop. Should you have any questions about this matter, please call me at 969-2585.

Sincerely,

Emily M. Williams

Emily M. Williams

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March 10, 1999

The Honorable William E. Kennard
Chairman
Federal Communications Commission
445 12th Street, N.W.
Washington, D.C. 20554

Re: Requests for Stay of the FCC's
Deaveraging Rules, CC Dkt. 96-98

Dear Chairman Kennard:

Last week the Commission received two requests that the Commission "stay" its geographic deaveraging rules. In a letter dated March 2, 1999, James Bradford Ramsay, NARUC's Assistant General Counsel, asked that the Commission "stay" the efficacy of the geographic deaveraging rule "until related State and Federal universal service programs are fully implemented." A letter from Bob Rowe, Chairman of the NARUC Telecommunications Committee, dated March 3, 1999, suggested a slightly different tack: that the Commission affirm the "FCC's policy in favor of deaveraging, but [suspend] the requirement that states deaverage until six months after a final FCC order concerning the large company high cost fund."

The Association for Local Telecommunications Services ("ALTS") opposes these requests. The Commission made the correct decision almost three years ago to require loop rates to be geographically deaveraged.¹ Geographic deaveraging will promote residential telephone competition, align prices more closely with costs, and thus promote efficient network investment. It is past time that the geographic deaveraging rules be implemented.

Nevertheless, ALTS recognizes that a number of states did not implement geographic deaveraging pending the outcome of the *AT&T Corp. v. Iowa Utilities Board* case.² Although all states should have known that there was a distinct possibility that the rules would be reinstated

¹ We note that when a motion for stay of the rules was filed in 1996 shortly after adoption of the rules, the Commission denied that motion. In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, CC Dkt 96-98 (released Sept. 17, 1996).

² 119 S. Ct. 721 (1999).

and, therefore, should have been prepared for such an eventuality, ALTS also recognizes that as a practical matter it may take some time for those states that have not implemented geographic deaveraging to do so. Accordingly, ALTS would have no objection if the Commission were to announce that it intends to give states a reasonable amount of time to implement these rules. In no event, however, should the states be given more than six months from the date on which petitions for rehearing would have been due at the Supreme Court in the *Iowa* case (i.e., February 19, 1999).

To the extent that the "stay" requests before the Commission seek a significant delay in implementation of the geographic deaveraging rules, such a delay would not be in the public interest.³ NARUC seeks to delay implementation "until related State and Federal proceedings are fully implemented". The universal service proceedings may not be fully implemented for several years. A delay this long would directly contradict the Commission's adoption of uniform pricing rules to effectuate Congress' intent to rapidly implement efficient competitive entry into the local markets, which the Supreme Court recently upheld. The Commission has found that geographic deaveraging is in the public interest, and neither NARUC nor Chairman Rowe challenge that finding.

Delay of the Commission's deaveraging rules will also delay residential competition, which the Commission, carriers, and consumers have all indicated is a priority. There are many residential customers in urban areas and those customers will be targets of CLEC marketing where the rates for local loops are deaveraged and reasonable. And, in more rural areas, competition will come more quickly if competitive carriers have been able to efficiently establish themselves in the urban areas initially.

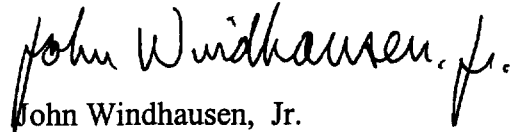
Finally, we note that while the parties advocating the delay of the deaveraging rules link the delay to the completion of universal service reform, they have not demonstrated any relationship between those two proceedings. The Commission did not initially link the deaveraging rules with Universal Service reform and there is no reason to do so now. The geographic deaveraging rules were adopted almost three years ago. Six months ought to be more than enough time for all parties involved to implement those rules.

³ ALTS notes that, as a legal matter, neither request has satisfied the requirements for grant of a stay. As the Commission well knows, a stay is relief that is generally requested pending the outcome of a challenge to particular rules. There is no challenge to the rules before the Commission. In addition, the test for grant of a "stay" is extremely rigorous. Generally a stay will not be granted unless the moving party can show that it is likely to prevail on the merits, the moving party will suffer irreparable harm if a stay is not granted, other parties will not be harmed if the stay is granted and the public interest favors the grant of a stay. See, e.g. *Wisconsin Gas Co. V. FERC*, 758 F.2d 669, 673-74 (D.C. Cir. 1985). None of those circumstances exist in this case.

The Honorable William Kennard
March 9, 1999
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In accordance with Section 1.1206(b)(1) of the Commission's rules, two copies of this letter are being submitted to the Secretary of the Commission.

Sincerely


John Windhausen, Jr.

cc: The Honorable Susan Ness
The Honorable Michael Powell
The Honorable Gloria Tristani
The Honorable Harold Furchtgott-Roth
Larry Strickling, Chief, CCB